

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
World Energy Solutions, Inc. for)
Certification as a Competitive Retail) Case No. 06-1363-GA-AGG
Natural Gas Aggregator/Broker.)

ENTRY

The attorney examiner finds:

- (1) On September 5, 2012, World Energy Solutions, Inc. (World Energy or company) filed an application for renewal of its certification as a competitive retail natural gas aggregator/broker. Thereafter, on October 19, 2012, World Energy filed a motion for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibit C-5 of its application be kept under seal. This exhibit contains the company's forecasted financial statements for 2012 and 2013.
- (2) In support of its motion for a protective order, World Energy explains that exhibit C-5 contains competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. Therefore, World Energy requests that the information found in exhibit C-5 be treated as confidential.
- (3) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399, 732 N.E. 2d 373 (2000).

- (4) Similarly, Rule 4901-1-24, O.A.C., allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”
- (5) Ohio law defines a trade secret as “information . . . that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Section 1333.61(D), Revised Code.
- (6) The attorney examiner has examined the information covered by the motion for protective order filed by World Energy, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in exhibit C-5 of World Energy’s application constitutes trade secret information. Release of these documents is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that this document could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that World Energy’s motion for protective order is reasonable with regard to

¹ See *State ex-rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

exhibit C-5 filed on September 19, 2012, and, therefore, the motion should be granted.

- (7) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification renewal applications to expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketers' certification applications with the expiration of their certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment shall be afforded to exhibit C-5 for a period ending 24 months from the effective date of the certificate issued to World Energy, or until January 14, 2015. Until that date, the docketing division should maintain, under seal, exhibit C-5, which was filed under seal in this docket on September 19, 2012.
- (8) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If World Energy wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to World Energy.
- (9) As a final matter, the attorney examiner notes that a previous confidential document filed by World Energy, which was designated as exhibit C-5, was granted protective treatment by the Commission and remains under seal. The filing date for this confidential document was October 18, 2010. World Energy has not requested an extension of the protective order granted by entry issued December 10, 2010, for the confidential exhibit C-5 of its 2010 application. Therefore, the attorney examiner directs the Commission's docketing division to release this exhibit into the public record on November 9, 2012.

It is, therefore,

ORDERED, That the motion for protective order filed by World Energy be granted with regard to the information contained in exhibit C-5 of World Energy's 2012 application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the un-redacted exhibit C-5, which was filed under seal in this docket on September 19, 2012, for a period of 24 months from the effective date of the certificate issued to World Energy, or until January 14, 2015. It is, further,

ORDERED, That the Commission's docketing division release into the public record, on November 9, 2012, World Energy's previous confidential document, designated as exhibit C-5, that was filed under seal in this docket on October 18, 2010. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Kerry Sheets

By: Kerry K. Sheets
Attorney Examiner

SEF/sc

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/26/2012 1:46:03 PM

in

Case No(s). 06-1363-GA-AGG

Summary: Attorney Examiner Entry granting a protective order filed by World Energy. - electronically filed by Sandra Coffey on behalf of Kerry Sheets, Attorney Examiner, Public Utilities Commission of Ohio